

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Appeal from Order NO. 981 OF 2016

WITH

Civil Application NO. 1242 OF 2016

Mr. Subedar Devnath Yadav And Ors

...Appellants

Versus

Mr. Madhukar Dharmaji Ghuge And Ors

...Respondents

Mr.Puneet S.Shukal, Mr.Manoj S.singh, Mr.Laxminarayan Shukla i/b. MKS Legal Associates, for the Appellants.

Mr.Dharam Sharma i/b. Dharam & Co., for the Respondents.

CORAM : G.S. KULKARNI, J.**DATE : 15 NOVEMBER 2016.**

P.C. :

1. Heard the learned Counsel for the Appellants and the learned Counsel for the Respondents.

2. The Appellants are original Defendant Nos.1 to 6. The challenge is to the ad-interim order dated 24 August 2016 passed by the learned Judge, City Civil Court, Dindoshi, Mumbai, in Notice of Motion No.2416 of 2016 in S.C.Suit no.2226 of 2016. By the impugned ad-interim order, Defendant No.1/Appellant No.1 has been restrained from representing himself as Chief Promoter of one Sharnesh Co-operative Housing Society which is stated to be a proposed society and from interfering in the matter of redevelopment till disposal of Notice of Motion

No.2416 of 2016.

3. The grievance of the Appellants as urged on behalf of the Appellants is that the documents which could support the case of the Appellant No.1 are not considered by the learned Trial Judge in passing the impugned order. He submits that if these documents were to be considered, the order as impugned could not have been passed against Appellant No.1.

4. On the other hand Mr.Sharma, learned Counsel for Respondents/Plaintiffs has opposed this appeal. He submits that no interference is called for as it is an ad-interim order.

5. I have perused the impugned order. It appears that earlier Appellant No.1 had approached the City Civil Court and filed S.C.Suit No.466 of 2010 which was dismissed for non prosecution. The relief in the said suit was for a declaration that Appellant No.1 be declared as Chief Promoter of the said proposed society.

6. After having considered the facts of the case and having perused the impugned order, I am of the opinion that it would be appropriate that Notice of Motion No.2416 of 2016 itself is heard and decided by the the learned Trial Judge. The Appellants are at liberty to place all material in support of their case before the learned Trial Judge. The impugned order is only ad-interim order passed prima facie on the

consideration of the material which was available at the ad-interim stage. The ad-interim findings do not show any perversity which requiring interference of this Court. Hence, I propose to dispose of the present appeal by passing the following order:-

ORDER

- (I) The Appellant is at liberty approach the Trial Court with a request to take up hearing of Notice of Motion No.2416 of 2016. This request of the Appellants be considered on its own merits.
- (II) The learned Trial Judge shall decide the Notice of Motion on its own merit without being influenced by the observations which are made in the ad-interim order.
- (III) The Appeal from Order is accordingly disposed of in the above terms. No costs.
- (IV) All contentions of the parties on merit of the matter are expressly kept open.

Civil Application No.1242 of 2016 does not survive in view of the disposal of the appeal. It is accordingly disposed of.

(G.S.KULKARNI, J.)